THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 7551 of 1996

Dated: 25.01.2007

Between:

Bharat Dynamics Limited,
Kanchanbagh, R.R. District.

... Petitioner

AND

Labour Court-I, A.P., Hyderabad
& another.

... Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 7551 of 1996

ORDER:-

Bharath Dynamics Limited filed this writ petition questioning the Award of the Labour Court-I, Hyderabad in I.D.No.172 of 1990 whereby it has set aside the oral termination order dated 10.02.1990 passed by the 2nd respondent and ordered reinstatement of respondent No.2 into service apart from awarding one half of backwages from 10.02.1990, till the date of filing of the I.D. i.e., 06.06.1990 and full wages from 07.06.1990, till his actual reinstatement.

Though several contentions are raised in the writ petition, Ms. B. Uma Devi, learned counsel appearing for the petitioner confined her submission to the award of backwages by the 1st respondent – Labour Court. Therefore, I need not go into the merits of the writ petition to the extent it relates to the finding given by the 1st respondent, Labour Court that the termination of the 2nd respondent is in violation of Section 25(F) of the Industrial Disputes Act 1947.

As regards the award of backwages, the learned

counsel submitted that since the 2nd respondent worked in the petitioner organization for a short period, namely, from 30.12.1988 to 10.02.1990 i.e., about 13½ months, the Labour Court is not justified in awarding 50% of backwages from the date of termination, till the date of raising the I.D. and full backwages during the pendency of the I.D., till the reinstatement of the 2nd respondent. In support of her contention, the learned counsel relied upon the judgment of Supreme Court in **ALLAHABAD JAL SANSTHAN v DAYA SHANKAR RAI**[1] and **GENERAL MANAGER, HARYANA ROADWAYS v RUDHAN SIGH**[2].

In the first cited case, after a consideration of various judgments of Supreme Court, the Supreme Court held as under:

> "We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to Government back to a situation which prevailed many years ago when he was

dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at."

In the second cited case, a similar proposition was laid down and it is apt to refer to para 8 of the judgment, which is extracted below:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period

> i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

Having heard the learned counsel for the petitioner, the learned counsel for the 2nd respondent and having considered the aforementioned judgments of the Supreme Court, I am of the considered view that the quantum of wages awarded by the Labour Court in the instant case appears to be on a high side. Applying the test laid down by the Supreme Court in the aforementioned two judgments, as the 2nd respondent worked only for a short period of 13 ½ months before he was terminated, awarding of 50% of backwages till the raising of the I.D. and full backwages subsequent thereto, in my view cannot be sustained.

In view of the facts and circumstances of the case, I consider it appropriate to reduce the backwages to 50% of the backwages awarded by the Labour Court in respect of both the periods, namely, the period prior to the raising of the I.D. and the period subsequent thereto.

The learned counsel brought to my notice that a sum of Rs.27,678/- was already deposited towards a

part of the backwages awarded by the Labour Court and that the said amount was received by the 2nd respondent.

In view of the said statement, which is not denied by the learned counsel for the 2nd respondent, I direct that the petitioner shall deposit the balance of the backwages as indicated in this order after deducting the amount already deposited by the petitioner.

Subject to the above modification, the writ petition is disposed of. No order as to costs.

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C.V. NAGARJUNA REDDY, J

Date: 25.01.2007
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[1] (2005) 5 SCC 124
[2] (2005) 5 SCC 591